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By ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

CALIFORNIA
DELAWARE
ILLINOIS
NEW JERSEY
NEW YORK
PENNSYLVANIA
WASHINGTON D.C.
WISCONSIN

RE: *Ex Parte* Notice
Rates for Interstate Inmate Calling Services
WC Docket No. 12-375

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the FCC's rules, the Martha Wright Petitioners hereby submit the following notice regarding a meeting held on October 14, 2015 with Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel, Dr. Coleman Bazelon and Kristin Stenerson of The Brattle Group and undersigned counsel.

During the meeting, undersigned counsel and Dr. Bazelon discussed the proposed Inmate Calling Service rate caps set forth in the September 30, 2015 Fact Sheet.¹ In particular, it was noted that the proposed rate caps will largely cover the individual ICS providers' costs in providing service.

As discussed, the attached table was prepared demonstrating that ICS providers whose costs represent % of all costs will be more than fully compensated under the proposed rates. firms, representing % of industry costs, will have % or less of their costs not recovered under the proposed rates, given 2013 call volumes and reported costs; with a very modest increase in call volumes, their costs would be fully covered by the proposed rates.² Only firm with about % of total industry costs, would not recover their costs under the proposed rates and may require waivers.

¹ See *FACT SHEET: Ensuring Just, Reasonable, and Fair Rates for Inmate Calling Services*, rel. Sept. 30, 2015.

² For example, the call volume for the State of Arkansas DOC rose by more than 150% in one month after the interstate ICS rates came into effect in February 2014. See Exhibit B. See also *Ex Parte* Submission of Praeses LLC, filed Oct. 13, 2015, pg. 2 (noting increase in call volume by more than 70% after interstate ICS rate caps were imposed).

DrinkerBiddle&Reath

Marlene H. Dortch, Secretary

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Also, it was noted that the proposed transition period will be sufficient to permit ICS providers and correctional facilities to reform their existing agreements to take into account the proposed rates. Because the FCC has chosen wisely not to ban site commissions, and because almost all ICS agreements contain either “change in law” or “force majeure” clauses,³ the ICS providers’ burden in reforming agreements will be substantially reduced.

There were no handouts provided during the meeting.

Respectfully submitted,



Lee G. Petro

Counsel for Martha Wright Petitioners

cc (by/email):

Mr. Travis Litman

³ Exhibit C is an excerpt from a recent RFP for the State of Arizona DOC. Amendment 6 to the RFP takes into account the possibility of future FCC action and establishes an amendment process in such an event. See San Bernardino County, California Agreement, Section E.1.2 (http://cob-sire.sbcounty.gov/sirepub/view.aspx?cabinet=published_meetings&fileid=1935574) (“This Contract may be modified to make changes required to be compliant with future Federal or State telecommunications laws, rules, or regulations, affecting inmate telephone services...County and Contractor will negotiate an amendment to this Contract or a new agreement and include the amendment or agreement in a subsequent bilateral modification (described below) within 90 days after the date of the unilateral modification.”); See Wise County, Texas Agreement, Section 14 (<http://www.co.wise.tx.us/Contracts/S/SECURUS.pdf>) (“We reserve the right to renegotiate or terminate this Agreement upon sixty (60) days advance written notice if circumstances outside our control related to the Facilities (including, without limitation, changes in rates, regulations, or operations mandated by law.”); See Kane County, Illinois Agreement, Section 6 (<http://tinyurl.com/qipj385>); See State of Arkansas Agreement, Section 14 (<https://www.prisonphonejustice.org/AR/AR-Contract-with-Securus-2015--2018/>); See Polk County, Florida Agreement, Section 5 (<http://www.polk-county.net/boccsite/Documents/Bids/08-12-Inmate-Telephone-Service/>); See *Ex Parte Submission of Lee G. Petro*, filed Aug. 2, 2013, (<http://apps.fcc.gov/ecfs/comment/view?id=6017461579>).

EXHIBIT A

FCC Rate Cap Impact Summary

Company Name	Total Over (Under)		Total Over (Under) Recovery (\$) [3]	Total Cost to Provider (\$) [4]	Over (Under) Recovery as Percent of Total Cost [5]
	Recovery for Debit and Prepaid (\$) [1]	Total Over (Under) Recovery for Collect (\$) [2]			
Custom Teleconnect					
Correct Solutions					
Inmate Calling Solutions					
Century Link					
NCIC					
Global TelLink					
Pay Tel					
Telmate					
Securus					
Lattice Incorporated					
Combined Public Communications					
Total					

and Notes:

Provider Data is 2013 MOU and 2013 Total Costs for ICS Providers by Payment Type and Facility Size from the Mandatory Data Collection Submissions.

FCC Rate Caps are from the 'FACT SHEET: Ensuring Just, reasonable, and Fair Rates for Inmate Calling Services', September 30, 2015.

[1]: For each provider, the following calculation was done at the Facility Size level (Jail 0 - 99, Prison 5,000 - 19,999, etc.):

ICS Provider Facility Size Over (Under) Recovery = $[\text{FCC Rate Cap}_{\text{debit\&prepaid}} - (\text{Total Cost}_{\text{debit\&prepaid}} / \text{Total MOU}_{\text{debit\&prepaid}})] \times \text{Total MOU}_{\text{debit\&prepaid}}$

The values presented here are the sums over all facility sizes for each provider.

[2]: FCC Collect Rate Caps are \$0.49 per MOU for Jails and \$0.14 per MOU for Prisons for one year.

For each provider, the following calculation was done at the Facility Size level (Jail 0 - 99, Prison 5,000 - 19,999, etc.):

ICS Provider Facility Size Over (Under) Recovery = $[\text{FCC Rate Cap}_{\text{collect}} - (\text{Total Cost}_{\text{collect}} / \text{Total MOU}_{\text{collect}})] \times \text{Total MOU}_{\text{collect}}$

The values presented here are the sums over all facility sizes for each provider.

[3]: [1] + [2].

[4]: 2013 Total Cost to Providers for all Facility Sizes and Payment Types.

[5]: [3] / [4].

EXHIBIT B

**SP-15-0016 – ATTACHMENT 2
COMMISSION AND MINUTE HISTORY**

TOTAL MINUTES				TOTAL COMMISSION
Month	Interstate	Intrastate	International	
Jul-11	62,242	832,598	337	\$ 165,201
Aug-11	60,472	827,735	354	\$ 163,783
Sep-11	58,821	806,924	288	\$ 159,031
Oct-11	52,809	779,641	195	\$ 151,863
Nov-11	60,034	834,631	197	\$ 163,519
Dec-11	74,360	778,326	488	\$ 154,890
Jan-12	56,466	781,129	372	\$ 153,702
Feb-12	67,413	975,738	342	\$ 190,314
Mar-12	62,338	909,044	379	\$ 177,602
Apr-12	61,736	916,488	364	\$ 179,015
May-12	58,360	886,611	368	\$ 172,479
Jun-12	54,403	823,734	332	\$ 160,839
Jul-12	50,993	764,697	366	\$ 149,741
Aug-12	52,450	775,055	517	\$ 151,698
Sep-12	50,579	768,484	291	\$ 150,227
Oct-12	48,153	741,921	358	\$ 144,298
Nov-12	54,799	816,605	263	\$ 159,574
Dec-12	53,007	788,843	411	\$ 154,011
Jan-13	47,487	786,186	276	\$ 151,869
Feb-13	60,317	936,861	334	\$ 180,979
Mar-13	55,492	890,164	317	\$ 171,661
Apr-13	55,313	892,892	352	\$ 172,468
May-13	53,058	851,303	348	\$ 163,781
Jun-13	52,197	818,400	379	\$ 157,739
Jul-13	54,758	860,433	320	\$ 145,404
Aug-13	54,828	896,106	396	\$ 150,615
Sep-13	51,893	876,701	217	\$ 146,773
Oct-13	49,883	851,736	301	\$ 142,545
Nov-13	60,916	991,682	295	\$ 153,768
Dec-13	71,480	1,062,670	287	\$ 159,490
Jan-14	58,893	959,360	247	\$ 142,501
Feb-14	129,129	1,130,935	237	\$ 163,461
Mar-14	163,081	1,083,366	249	\$ 155,327
Apr-14	183,137	1,112,408	322	\$ 160,305
May-14	201,455	1,063,078	736	\$ 157,816
Jun-14	209,666	977,727	741	\$ 149,358
Jul-14	208,435	895,584	451	\$ 137,863
Totals	2,860,853	32,745,796	13,027	\$ 5,865,510.26

EXHIBIT C

SOLICITATION AMENDMENT

ARIZONA
DEPARTMENT OF CORRECTIONS
1601 W. JEFFERSON, MAIL CODE 55302
PROCUREMENT SERVICES
PHOENIX, ARIZONA 85007

SOLICITATION NO. ADOC14-00003887/ADC No. 14-066-24 AMENDMENT NO. 6 Contact: Kristine Yaw

SOLICITATION DUE DATE: May 22, 2014

SIGNED COPY OF THIS AMENDMENT MUST BE RETURNED WITH YOUR BID SOLICITATION.

RFP ADOC14-00003887/ADC No.14-066-24 – Inmate Telephone Systems

The Proposal Due Date shall remain May 22, 2014 at 3:00 p.m., M.S.T. (Arizona Time)

THIS SOLICITATION IS AMENDED AS FOLLOWS:

Amend to change Special Terms and Conditions, Page 10, Section 1.21 as follows:

FROM:

1.21 EVALUATION:

1.21.1 In accordance with the Arizona Procurement Code §41-2534, Competitive Sealed Proposals, award shall be made to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the Department based upon the evaluation criteria listed below. The evaluation factors are listed in the relative order of importance.

Exceptions to the Terms and Conditions, as stated in the Uniform Instructions Section C4, will impact an Offeror's susceptibility for award.

1.24.1.1 **Commission Rate (maximum 1250 points)** - Calculated at the rate of 5 points for every percentage up to 50 percent. (For example: 45.0 % commission rate = $45 \times 5 = 225$ points).
Plus 50 points for every percentage over 50 percent. (For example: 54.0 % commission rate = $(50 \times 5) + (4 \times 50) = 450$ points).

1.24.1.2 **Technical Requirements (maximum 150 points)**

1.24.1.3 **Contractor Qualification Requirements (maximum 100 points)**

1.24.1.4 **Implementation Plan (maximum 50 points)**

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SOLICITATION DUE DATE: May 22, 2014

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TO:

1.21 EVALUATION:

1.21.1 In accordance with the Arizona Procurement Code §41-2534, Competitive Sealed Proposals, award shall be made to the responsible Offeror whose proposal is determined in writing to be the most advantageous to the Department based upon the evaluation criteria listed below. The evaluation factors are listed in the relative order of importance.

Exceptions to the Terms and Conditions, as stated in the Uniform Instructions Section C4, will impact an Offeror's susceptibility for award.

1.21.1.1 **Commission Rate (maximum 1500 points) - Calculated at the rate of 15 points for every percentage of commission. (For example: 60.0 % commission rate = 60.0 X 15 = 900 points).**

1.21.1.2 **Technical Requirements (maximum 150 points)**

1.21.1.3 **Contractor Qualification Requirements (maximum 100 points)**

1.21.1.4 **Implementation Plan (maximum 50 points)**

Amend to change Scope of Work, Page 50, Section 2.7.1 as follows:

FROM:

2.7.1 One Contractor will be selected to enter into a written contract as a result of this RFP with the selected Contractor to begin providing services no later than 120 days after execution of a written contract. The proposal must include an implementation plan describing the tasks and activities to be completed and their timeframes/milestones prior to the start of services. The implementation plan is to detail how the Contractor would satisfy the RFP's requirements regarding the installation, operation and maintenance of an inmate phone system with monitoring and recording capabilities, such that each issue addressed would be complete and detailed enough to assure the Department of the Contractor's understanding and capability to perform the cited requirements, and to substantiate that the IPS will be fully operational within the timeframe stated after execution of the written contract.

2.7.1.1 Please specify Contractors timeframe for the implementation plan if less than 120 days.

TO:

2.7.1 One Contractor will be selected to enter into a written contract as a result of this RFP with the selected Contractor to begin providing services no later than 90 days after execution of a written contract. The proposal must include an implementation plan describing the tasks and activities to be completed and their timeframes/milestones prior to the start of services. The implementation plan is to detail how the Contractor would satisfy the RFP's requirements regarding the

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installation, operation and maintenance of an inmate phone system with monitoring and recording capabilities, such that each issue addressed would be complete and detailed enough to assure the Department of the Contractor's understanding and capability to perform the cited requirements, and to substantiate that the IPS will be fully operational within the timeframe stated after execution of the written contract.

2.7.1.1 Please specify Contractors timeframe for the implementation plan if less than 90 days.

The following questions have been submitted for the above referenced Solicitation in which the Department has provided the following answer:

Question submitted on May 6, 2014 from Inmate Calling Solutions, LLC

Question 1: Interstate calling commissions - The Department's answers to the questions state that commissions are not being paid on Interstate calls and that the FCC currently prohibits commissions on Interstate calls. - The current Order in place does not prohibit commissions from being paid on Interstate calling. a) Can the Department please provide information as to why it believes commissions on Interstate calling is not allowed or is prohibited by the FCC? b) Commissions seem to be the highest priority for the RFP as they are worth 1,250 of the 1,550 total points available, or over 80% of the scoring. However, the RFP gives all 1,250 points to all Offerors that propose a 70% commission and provide no additional points for proposals exceeding a 70% commission. As such, it would not seem that an Offeror would propose more than a 70% commission because no additional points would be awarded. Please confirm that a compliant proposal with a 70% commission will receive the same 1,250 points as a compliant proposal which proposes higher than 70% commissions and thus, there is no point separation for the available 1,250 points.

Answer: a) FCC Order No. 219 has been interpreted as stating that site commission payments are not part of the cost of providing Inmate Calling Services (ICS) and therefore not compensable in interstate ICS rates. Offerors shall not be required to pay commissions on interstate calls. However, the Department reserves the right to require the payment of these commissions in the future contract should the Department receive a different legal interpretation or should the rules be modified by the FCC. Any change to interstate commissions would be subsequently amended by negotiation and mutual agreement through a contract amendment. b) Section 1.21 Evaluation is changed by this amendment. Please refer to the beginning of this amendment.

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ALL OTHER PROVISIONS OF THE SOLICITATION SHALL REMAIN IN THEIR ENTIRETY

Vendor hereby acknowledges receipt and understanding of above amendment.

The above referenced Solicitation Amendment is hereby executed this 12th day of May 2014 at Phoenix, Arizona.

Signature _____ Date _____

Typed Name and Title _____

Name of Company _____

LG/ky


Leon George, Chief Procurement Officer